IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

OP.No. 7591 of 2000(D)

PETITIONER:

MANUEL MATHEW,
KALLURKKAD FARMERS' CO- OPERATIVE BANK
LTD. NO.2605, KALLURKKAD P.O.,
MUVATTUPUZHA, ERNAKULAM.

BY ADV. SRI.P.V.BABY

RESPONDENTS:
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1. **THE KALLURKKAD FARMERS' CO-OP.**
   BANK LTD. NO.2605, P.O. KALLURKKAD,
   MUVATTUPUZHA REP.BY ITS
   MANAGING DIRECTOR.

2. **THE JOINT REGISTRAR OF CO- OPERATIVE**
   SOCIETIES (G), ERNAKULAM.

3. **STATE OF KERALA, REP.BY SECRETARY**
   TO CO- OPERATION DEPARTMENT,
   SECRETARIAT, TRIVANDRUM.

BY ADV. SMT.I.SHEELA DEVI - R1
GOVERNMENT PLEADER SRI.P.N.SANTHOSH - R2 & R3
SMT.REJI RAMACHANDRAN
SMT.MINI K.D.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.7591/2000

ORDER ON CMP. NO.12591/2000 IN OP. NO.7591/2000

DISMISSED

23.10.2007 **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

2EXT.P1:- COPY OF THE PETITION DT. 22.4.97 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE ORDER DT. 13.5.97 ISSUED BY THE ASST. REGISTRAR OF CO.OP.SOCIETIES TO THE PETITIONER.

EXT.P3:- COPY OF THE ORDER DT. 18.5.98 ISSUED BY THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE APPEAL MEMORANDUM DT. 1.7.98 SUBMITTED BY THE PETITONER BEFORE THE 3RD RESPONDENT.

EXT.P5:- COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETTIIONER BEOFRE THE 3RD RESPONDENT.

EXT.P6:- COPY OF THE ORDER DT. 27.1.2000 ISSUED BY THE 3RD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.7591 OF 2000

Dated this the 23rd day of October, 2007

JUDGMENT

The petitioner, an employee of the first respondent, complained to the statutory authority that he was being denied the benefit of being granted a higher grade in terms of G.O.(MS) No.39/91, which, according to him, was available.

2. On consideration of his complaint, the departmental respondents concluded that he was reverted while in service and such reversion being in force, he was not entitled to claim stagnation in a post for 10 years. However, while his appeal was pending before the Government, which ultimately led to Ext.P6 decision, indisputably the reversion of the petitioner was set aside. This means that he could claim continuity in the post without the effect of the reversion, because, it was not a case of re-promotion. Thus, having become eligible with a continuous minimum period of 10 years of stagnation in the cadre of junior clerk, the petitioner contents that the is entitled to the benefit of

G.O.(MS).39/91 dated 13.4.1991, while the departmental respondents and the first respondent relied on G.O.(MS) No.7/96 dated 25.1.1996.

3. By G.O.(MS) No.7/96, modifications were made to G.O.(MS).39/91. Though G.O.(MS) No.7/96 is issued only in 1996, it is purportedly given retrospective effect from 27.4.1991, that is the date of G.O.(MS).39/91. G.O.(MS).39/91 and G.O.(MS) No.7/96 are executive orders, the issuance of which is not referable to any statutory power to issue any decision with retrospective effect. This means that, in the normal course, G.O.(MS) No.7/96 can operate only from the date of its issuance. At any rate, if any right has accrued in favour of the petitioner on the basis of G.O.(MS).39/91, that could not have been taken away as per G.O.(MS) No.7/96.

4. Having reached the category of junior clerk on 1.10.1984, with the passage of 10 years, by 1.10.1994, the petitioner became an employee of the first respondent who remained in the

same category for 10 years or more. This was the qualifying period to earn a higher grade in terms of G.O.(MS).39/91. His entitlement to such higher grade in the cadre of junior clerk therefore inure to him on completion of 10 years on 1.10.1984. Such right cannot be taken away by the terms of G.O.(MS) No.7/96 and that G.O. does not, in any manner, affect the right of the petitioner flowing out of G.O.(MS).39/91 as noticed above. He was entitled to be granted one higher grade in the category of junior clerk on completion of 10 years from 1.10.1984. It is so declared.

5. Learned counsel for the Bank points out that as on the date of completion of 10 years of service from 1.10.1984, the emoluments that were earned by the petitioner was more that that of a senior clerk. All that has to be ensured is that any financial advantage that would come to the petitioner by reason of the declaration contained in this judgment shall not exceed the emoluments of the immediate senior of the petitioner who was drawing emoluments in the scale applicable to in the cadre

of senior clerk as on the date of completion of 10 years service by the petitioner in the category of junior clerk from 1.10.84. It is so declared.

6. On the basis of the aforesaid declarations, the first respondent is directed to work out the actuals and if any amount is found due to the petitioner, the same shall be released to him within a period of 4 months from the date of receipt of a copy of this judgment. As a consequence of the declarations granted in this judgment, the decisions contained in Exts.P3 and P6 are quashed.

The writ petition is disposed of as above.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.7591 OF 2000

JUDGMENT

23rd OCTOBER, 2007.

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